



FIELD ORDERS

Chapter

ARREST and SEARCH

Subject

Arrest of Foreign Nationals

POLICY

1. It is the policy of the City of Scottsdale and the Scottsdale Police Department to not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.
2. It is also the policy of the City of Scottsdale and the Scottsdale Police Department to respect the civil rights of all individuals.
3. Scottsdale officers should be aware that the enforcement of state and federal laws related to immigration is a complex effort requiring the cooperation of multiple agencies and the consideration of multiple facts and circumstances. Officers are encouraged to contact supervisors when necessary for guidance.

PURPOSE

This policy provides guidelines for managing investigations into issues related to immigration enforcement and the arrest of foreign nationals.

DEFINITIONS

Alien: A person who is not a U.S. citizen, including a resident alien.

Consular Official: A person who displays a driver license issued by the United States Department of State, or who otherwise claims immunities or privileges under Title 22 United States Code.

Documented Individual: A person who has proof of U.S. citizenship or lawful presence in the United States such as a valid visa or a permanent resident alien card.

Drop House: A house or building being used as a transfer/holding facility by persons engaged in smuggling undocumented individuals.

Foreign Diplomat: A person who displays a driver license issued by the United States Department of State, or who otherwise claims immunities or privileges under Title 22 United States Code.

Foreign National: Person who is not a U.S. citizen, including a resident alien.

Load Vehicle: A vehicle engaged in smuggling undocumented persons.

Undocumented Individual/Unauthorized Alien: A foreign national (alien) who is not lawfully present in the United States.

PROCEDURE

Except for foreign diplomats or consular officials, foreign nationals may be arrested for criminal offenses. Violations of federal immigration laws, such as a foreign national illegally residing in the United States, is under the jurisdiction of the U.S. Immigration and Customs Enforcement (ICE), an investigative arm of the Department of Homeland Security.

1. Federal Immigration Violations

An individual subject to a federal immigration arrest warrant or an individual that has committed a federal criminal immigration violation (the vast majority of federal immigration violations are civil) should be arrested and turned over to ICE.

2. State Criminal Laws with an Immigration Nexus

It is also a violation of state law to smuggle an undocumented individual for profit or a commercial purpose, or to traffic an undocumented individual knowing the person will be subject to forced labor or services, or to transport, move, conceal, harbor or shield an unlawfully present alien after first committing another criminal offense.

3. ICE Notification

Notify ICE under the following circumstances. Contact Dispatch or Detention for the phone number.

- a. You arrest an individual unlawfully present in the United States and the suspect will likely be transported to the county jail or an ICE facility. ICE will place an immigration hold on the suspect.
- b. You locate a drop house or a load vehicle.
- c. You need the expertise or assistance of an ICE agent in your investigation.
- d. You have arrested someone subject to a federal immigration warrant.

- e. After making an arrest, the subject informs you or you have a reasonable belief that the subject is residing illegally in the United States. *See* FIELD Order 2409/Booking Procedures Overview.
- f. Any other situation you feel warrants ICE notification.

4. Victims/Witnesses

- a. There is no legal mandate that officers verify the immigration status of unauthorized individuals who are victims or witnesses of a crime.
- b. The federal government has a U Visa Program that grants temporary legal status to crime victims under certain circumstances during the course of a criminal investigation and prosecution. Contact ICE for further information on this program.

5. Foreign Diplomats and Consular Officials

Depending on actual status, a foreign national claiming to be a foreign diplomat or a consular officer may be exempt from arrest. For traffic violations, including criminal traffic violations such as DUI and reckless driving. *See* FIELD Order 4011/Traffic Violations by Foreign Diplomats. An officer contacting a person believed to be a foreign diplomat or consular officer must:

- a. Immediately notify a supervisor.
- b. Immediately contact the United States Department of State in order to verify the person's status and immunity.

If you determine the individual is entitled to the full immunity of a diplomatic agent, do not arrest the individual, and do not, except in extraordinary circumstances, handcuff, detain, or search the individual (includes the individual's vehicle unless it has been reported stolen). Extraordinary circumstances include when the public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed. Record all the information from any identification cards or paperwork and fully document the circumstances of the incident. The Department of State may take subsequent steps based on the circumstances surrounding the incident. In addition, criminal prosecution may be possible at a later date.

If it is determined the individual is not entitled to full immunity, follow normal police procedure in consideration of any limitations given by the United States Department of State.

6. Consular Notification

When a foreign national is arrested, advise the foreign national of his or her right to have his or her government notified concerning the arrest. If the foreign national asks for notification to be made, inform the nearest consulate or embassy by telephone or fax. Do not let the notification of a foreign consulate interfere with the investigation. Note in the DR whether the foreign national did or did not request government notification.

1. Some countries require notification even if declined by the foreign national. These countries are:

Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	St. Kitts and Nevis
China ¹	St. Lucia
Costa Rica	St. Vincent and the Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong ²	Turkmenistan

¹ Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Inform such persons without delay that the nearest office of the Taipei Economic and Cultural Representative Office can be notified at their request.

² Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region. U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of

Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom ³
Kiribati	U.S.S.R. ⁴
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
Malaysia	Zimbabwe

2. Consular officials are entitled to access their nationals in detention, and are entitled to provide consular assistance. Notify consular officials when guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent.
3. Make inquiries concerning contact with foreign governments to the assistant legal advisor for consulate affairs at the Department of State, (202) 647-4415; FAX (202) 736-7559. After normal business hours, contact the command center of the Bureau of Diplomatic Security, Department of State, (202) 647-7277 (24 hours).

Notify consular officials when a foreign aircraft wrecks or crashes within department jurisdiction.

The investigating officer will notify a foreign consulate whenever a foreign national dies or is seriously injured, regardless of the cause (i.e., traffic collision, homicide, suicide, natural, etc.) within department jurisdiction.



Hong Kong passports in the same manner as is required for bearers of Chinese passports, i.e., immediately, and in any event within four days of the arrest or detention.

³ British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁴ Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification is given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.